

# Natural Resources Interim Committee Meeting

*Water Management  
Law in Idaho*

**Phillip J. Rassier**  
**Deputy Attorney General**

**April 9, 2004**  
**Boise, ID**

# Prior Appropriation Doctrine

---

- Rights to the use of water in Idaho are governed by the Prior Appropriation Doctrine. Art. 15, § 3, *Idaho Const.*
- All surface and ground waters are the property of the State whose duty it is to supervise their appropriation and allotment to those diverting the water to any beneficial use. I.C. 42-101 & 42-226.
- As between appropriators, the first in time is first in right. I.C. 42-106 & 42-226.

# Types of Water Rights

---

- **Permits**
- **Licenses**
- **Statutory Claims (I.C. 42-243)**
- **Beneficial Use Claims (SRBA)**
- **Decrees**

# Elements of Water Right

- Source
- Priority Date
- Rate of Diversion
- Nature of Use
- Season of Use
- Point of Diversion
- Place of Use



# Elements of Water Right

## Priority Date

---

- Determines who gets water during times of shortage
- Date Water Right Established
  - » Relates back to application filing date if right based on the permit process
  - » Date of first diversion and application to beneficial use if right based on the non-statutory “beneficial use” method of appropriation

# Elements of Water Right

## Nature of Use

---

- All uses require a recorded water right except:
  - » Domestic ground water (limited to 13,000 gpd and ½ acre) (I.C. 42-111)
  - » Other ground water uses if use within 0.04 cfs and 2,500 gpd (I.C. 42-111)
  - » In-stream livestock watering (I.C. 42-113)

# Types of Water Rights

---

- **Statutory Claims**

- » **For water uses initiated prior to the mandatory permit dates:**

- ✓ **Surface Water: May 20, 1971**
    - ✓ **Ground Water: March 25, 1963**

- **IDWR “4000” series numbered rights**
      - **Claims not confirmed until decreed**
      - **Curtailed first in times of shortage**

# Types of Water Rights

---

- **Beneficial Use Claims (SRBA)**
  - » **Expansion Claims (I.C. 42-1426)**
    - claim filed in adjudication for expanded use initiated after mandatory permit dates but before 11/19/1987
    - no additional rate of flow
    - condition advancing priority date to 1994 to prevent injury to other rights



# Water Right Transfers

---

- Change in Recorded Right
  - » Nature of Use
  - » Place of Use
  - » Point of Diversion
  - » Period of Use
- Requires Application & IDWR Approval
- Exception: SRBA Accomplished Transfers completed prior to 11/19/87 (I.C. 42-1425)

# Water Right Transfers

---

- **Transfer Criteria (I.C. 42-222)**
  - » **No injury to other rights**
  - » **No enlargement or expansion**
  - » **Beneficial use**
  - » **Consistent with conservation practices**
  - » **Local Public Interest**

# Drought Emergency Transfers

---

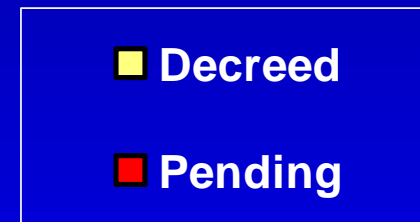
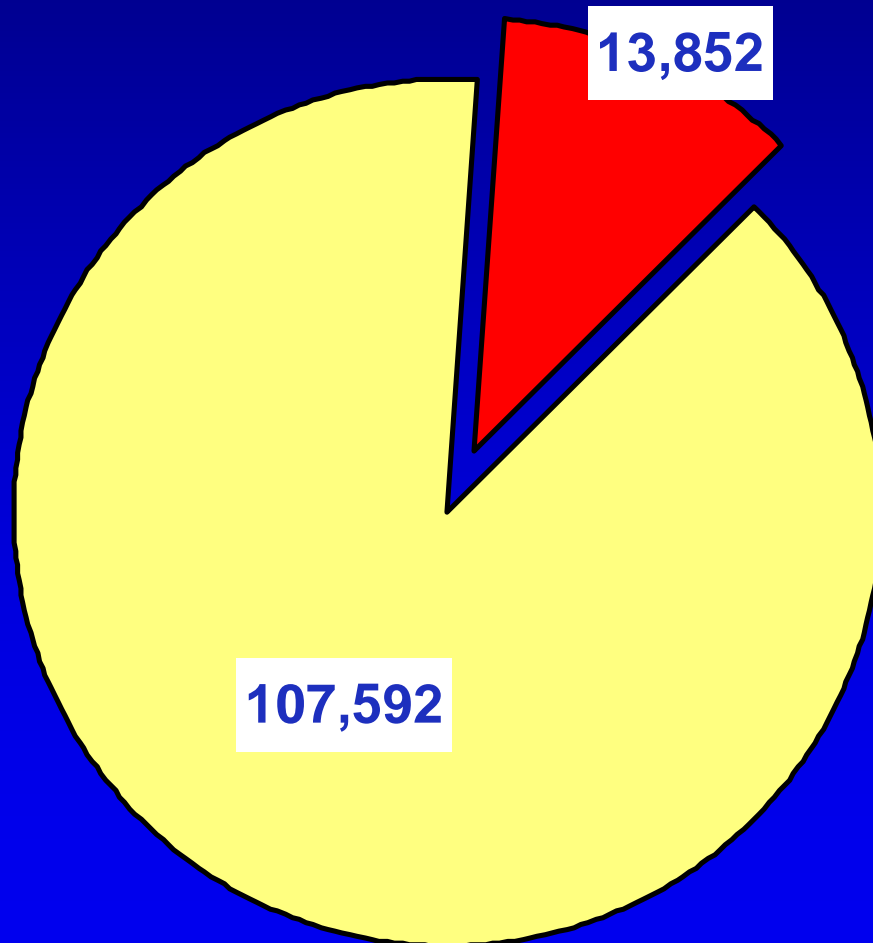
- Temporary Transfers or Exchanges (I. C. 42-222A)
  - » Approved drought declaration
  - » \$50 application fee
  - » no advertising required
  - » Approved only for replacement supplies
  - » Unstacking of rights generally not allowed

# **Snake River Basin Adjudication (SRBA)**

---

- **State Court determination of all claims to the use of water within the Snake River Basin Drainage in Idaho by the Fifth Judicial District Court in Twin Falls (SRBA District Court)**
  - » **Commenced Nov. 19, 1987**

# SRBA Summary as of March 8, 2004



**121,684 Total  
Director's Reports**

# Water Management Authority

---

- **State Water Districts**

**The Director of IDWR has direction and control of the distribution of surface and ground water from all natural water sources within a water district.**

- » **Distribution accomplished through watermasters under supervision of Director**
- » **Water is distributed in accordance with the prior appropriation doctrine**
- » **Measuring devices and headgates required**
- » **Compliance through NOVs or curtailment**

**I.C. 42-602.**

# Water Management Authority

---

- **Outside of Water Districts**

**The Director may regulate and enforce compliance with water rights**

- » **May order installation of measuring devices and headgates (I.C. 42-701)**
- » **Issue notices of violation for water uses not in accordance with a water right, and require compliance (I.C. 42-351 & 42-1701B)**
- » **Regulate the use of ground water rights pursuant to I.C. 42-237a(g)**

# Water Districts

---

- **General Duties of Watermaster:**

- 1) deliver water in accordance with water right priority dates

- authority to control/regulate diversion works

- 2) measure and report diversions under water rights

- 3) provide annual reports of expenses and water delivered

- 4) report and control unauthorized diversions



# Conjunctive Management

---

- IDWR's Conjunctive Management Rules (IDAPA 37.03.11) define conjunctive management as the  
“Legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, including areas having a common ground water supply.”
- Rules promulgated by IDWR through negotiated rulemaking in 1994 pursuant to I.C. 42-603

# Critical Ground Water Areas

---

- I.C. 42-233a

**“Critical ground water area” defined as any ground water basin, or designated part thereof, not having sufficient ground water to provide a reasonably safe supply for irrigation of cultivated lands, or other uses in the basin at the then current rates of withdrawal, or rates of withdrawal projected by consideration of valid and outstanding applications and permits, as may be determined and designated, from time to time, by the Director of IDWR.**

# Ground Water Management Areas

---

- I.C. 42-233b

“Ground water management area” defined as any ground water basin or designated part thereof which the director of the Department of Water Resources has determined may be approaching the conditions of a critical ground water area.

# Other Types of Districts

---

- **Water Measurement Districts**
- **Irrigation Districts**
- **Ground Water Districts**
- **Ground Water Management Districts**
- **Recharge Districts**
- **Water and Sewer Districts**
- **Other Water Distribution Entities**
  - Canal Companies**
  - Ditch Companies**
  - Lateral Associations**

# Water Measurement Districts

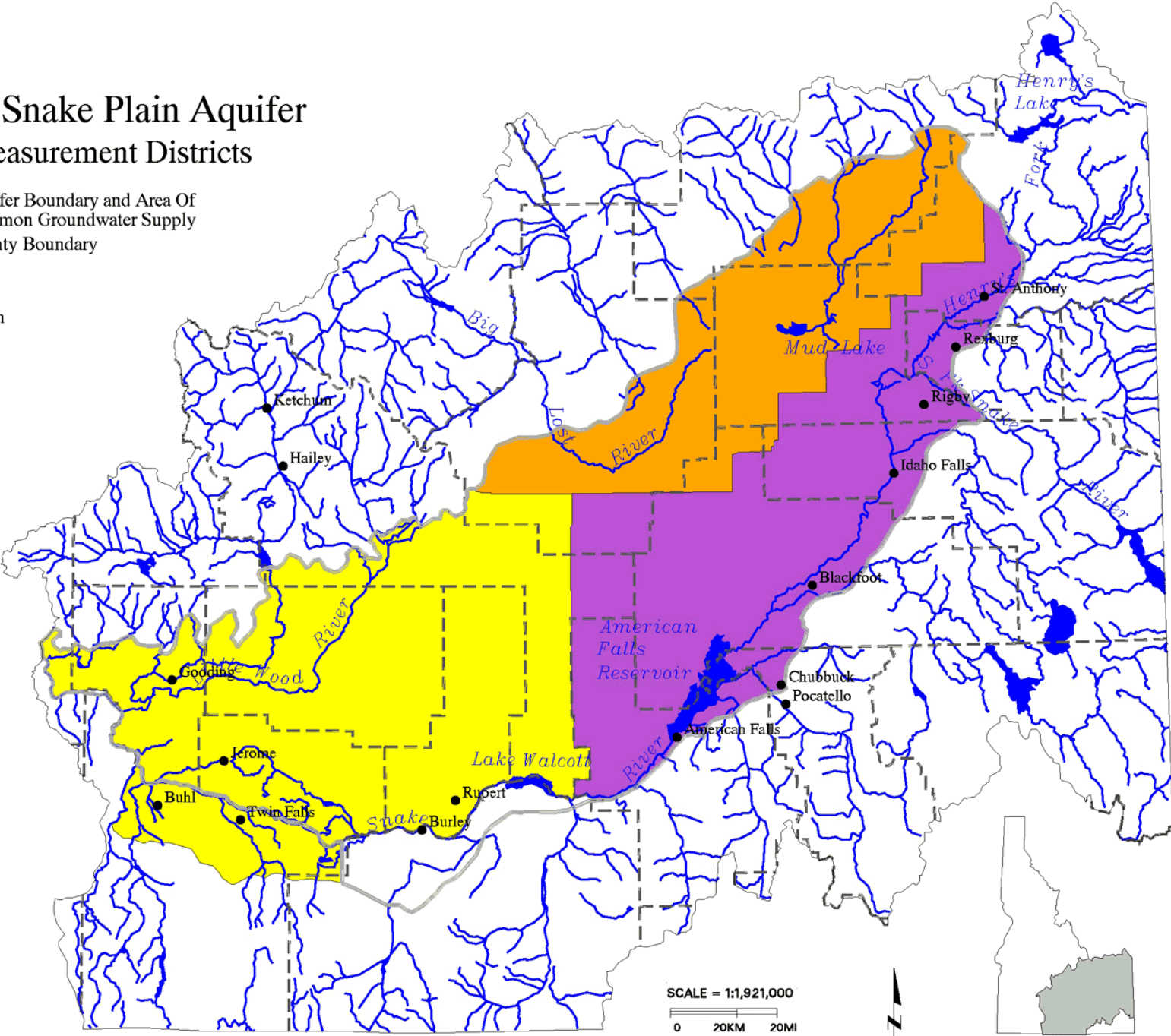
---

- Three districts created in 1996 by IDWR Director for measurement and reporting water use only (I.C. 42-706)
- Created in areas where water rights not yet adjudicated and Water Districts not formed
- Hydrographers elected annually to provide measurement and reporting services

# Eastern Snake Plain Aquifer

## Water Measurement Districts

- Aquifer Boundary and Area Of Common Groundwater Supply
- - - County Boundary
- Yellow West
- Purple East
- Orange North



Source: IDWR data

# Ground Water Districts

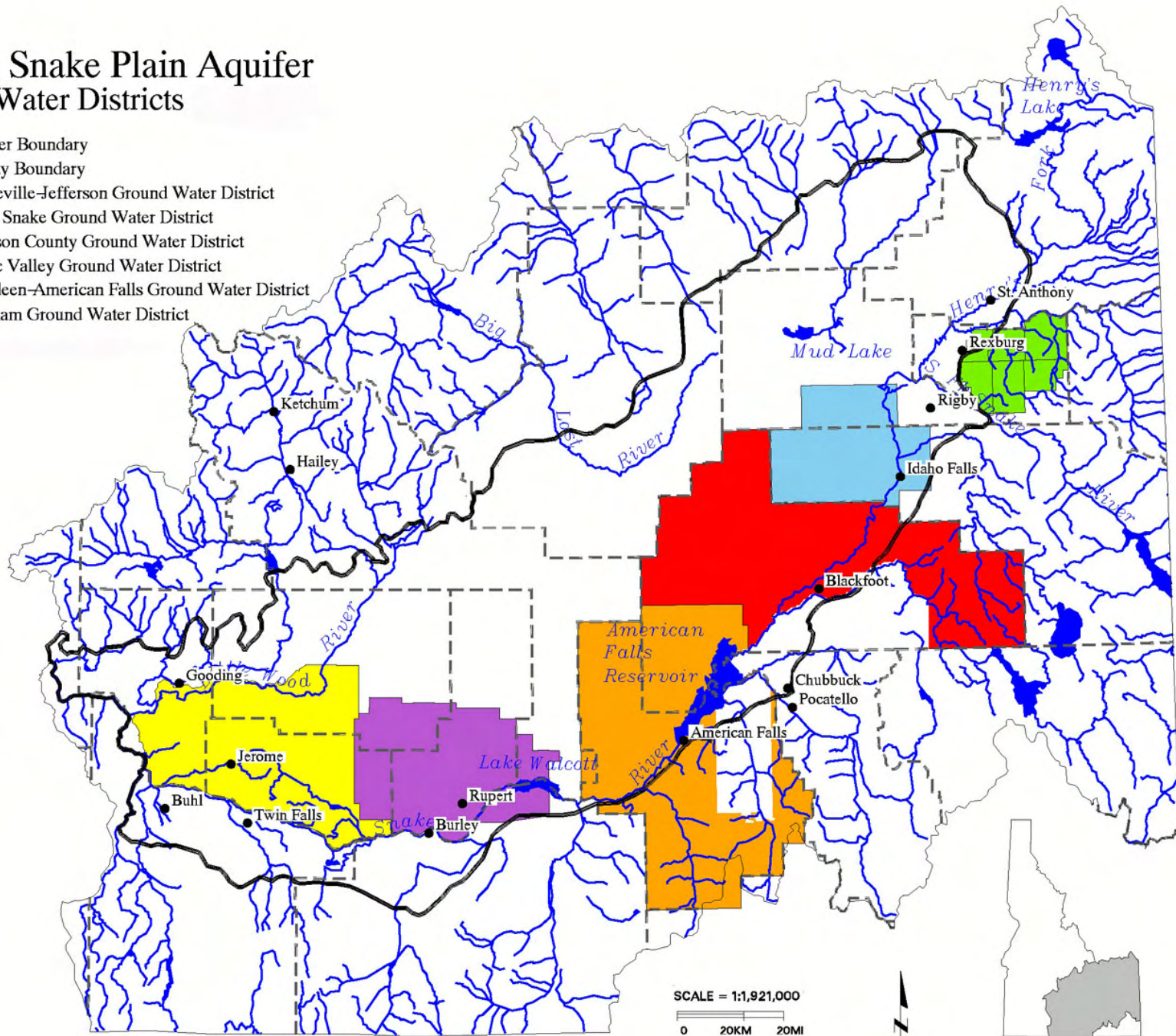
---

- Created under legislation enacted in 1995 for purpose of organizing and representing ground water users (Ch. 52, Title 42, Idaho Code)
- Six districts created and currently active
- Users may join as full members or for mitigation only
- Similar to Irrigation Districts in creation and organization



# Eastern Snake Plain Aquifer Ground Water Districts

- Aquifer Boundary
- - - County Boundary
- Blue Bonneville-Jefferson Ground Water District
- Yellow North Snake Ground Water District
- Green Madison County Ground Water District
- Purple Magic Valley Ground Water District
- Orange Aberdeen-American Falls Ground Water District
- Red Bingham Ground Water District



Source: IDWR data



# Recharge Districts

---

- **Chap. 42, Title 42, Idaho Code, enacted in 1978, authorizes formation of an aquifer recharge district**
- **Lower Snake River Aquifer Recharge District formed in Jerome, Lincoln and Gooding Counties**
- **Purpose: increase available ground water and enhance spring flows in Hagerman Valley**

# Recharge District Authority

---

- In 1985, the Legislature extended to irrigation districts authority to construct and operate recharge projects. (I.C. 43-343)
- In 1994, similar authority was extended to ground water districts. (I.C. 42-5225)
- Also in 1994, the Legislature recognized recharge as a beneficial use of water by any person. (I.C. 42-4201A)

# Irrigation Districts

---

- Usually created for purpose of new irrigation development or acquiring existing irrigation projects (Title 43, Idaho Code)
- Currently about 55 active districts
- Irrigation districts normally hold water rights and own diversion facilities and infrastructure
- Annual assessments made against the lands served by the district

# ESPA DISTRICTS

Eastern Snake Plain Aquifer

IDWR Administrative Basins

Townships

Water District No. 130 - Basins 36 and 43

Water District No. 120 - Basins 35 and 41

Water District No. 36-A (Existing District)

North Snake GWD

Magic Valley GWD

Aberdeen-American Falls GWD

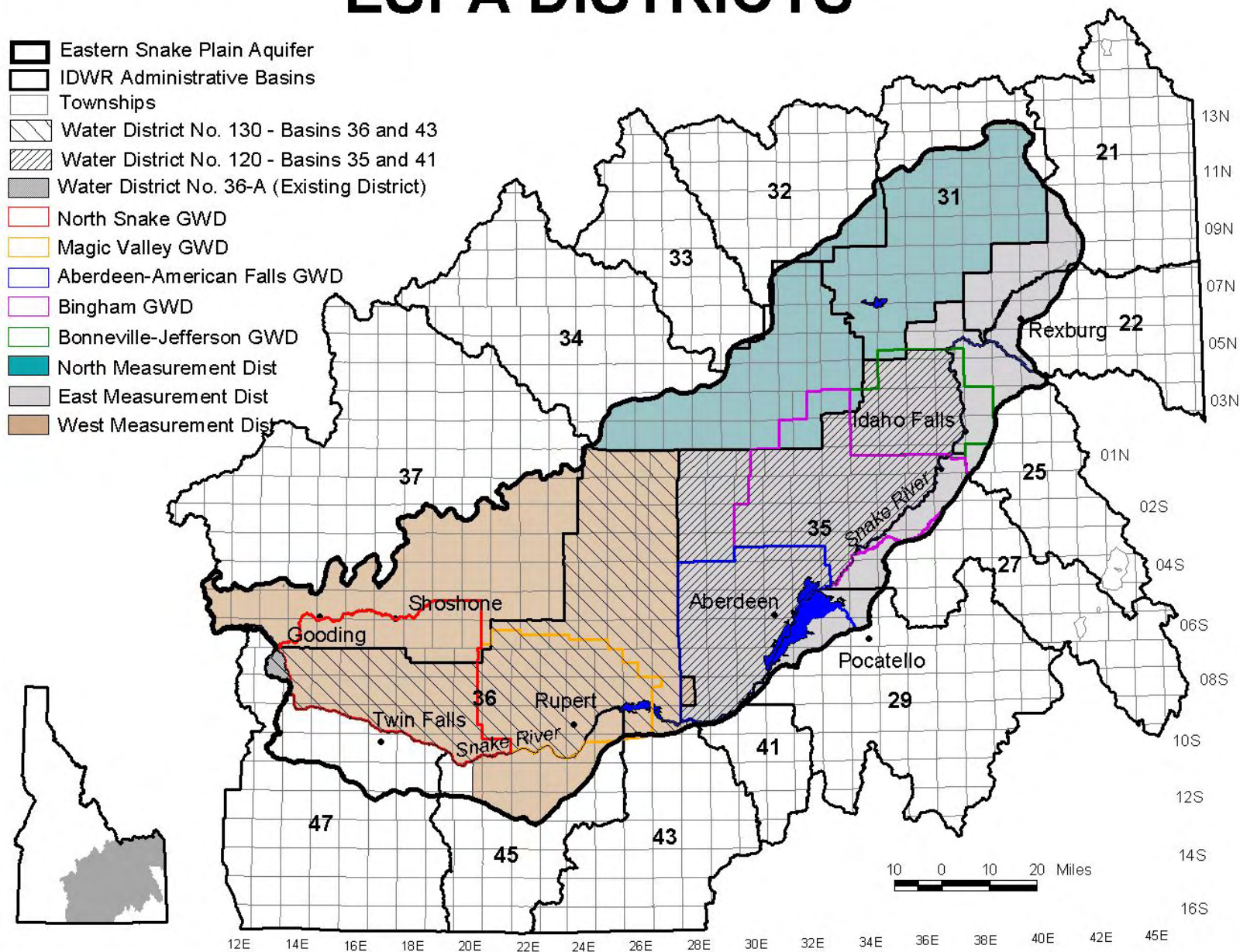
Bingham GWD

Bonneville-Jefferson GWD

North Measurement Dist

East Measurement Dist

West Measurement Dist



# Canal and Ditch Companies

---

- Private companies formed for purpose of constructing or acquiring diversion works, ditches and/or storage facilities (example: Carey Act companies)
- Formed, organized as private companies
- Users own shares in companies
- Assessments based on shares to pay costs of operation and maintenance
- May employ own “watermasters” or ditch riders to manage and deliver water

# Lateral Associations

---

## Chapter 13, Title 42, Idaho Code

- Formed for purpose of maintenance and delivery of water on canal or ditch laterals
- Annual meetings, budgets, assessments, and election of lateral manager and other officers
- Director of IDWR can appoint lateral managers

# Water and Sewer Districts

---

## Chapter 32, Title 42, Idaho Code

**Created by order of court upon petition of taxpayers owning property within proposed area. Created for purpose of supplying water for domestic, commercial or industrial purposes, or for sewage disposal purposes.**

**(No IDWR jurisdiction. Numerous districts in Idaho.)**

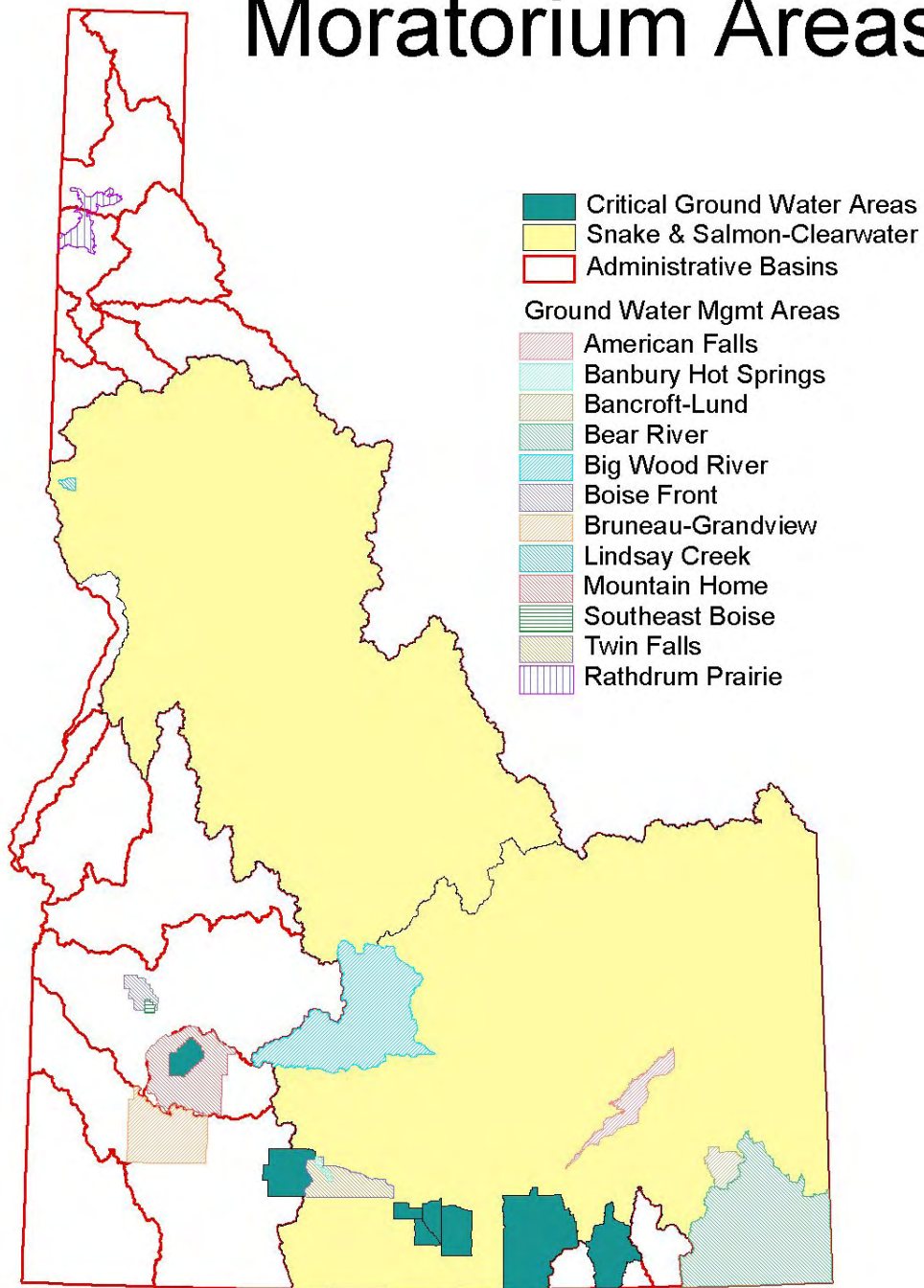
# Water Right Moratoriums

---

- May be established by Director to suspend issuance of new water right permits or further development under existing permits
  - » Surface Water test: “as necessary to protect existing vested water rights” (I.C. 42-1805(7))
  - » Ground Water test: withdrawals exceed the reasonably anticipated average rate of future annual recharge (I.C. 42-237a(g))



# Moratorium Areas



# How to Research Water Rights?

---

- IDWR's Web Site
  - » [www.idwr.state.id.us](http://www.idwr.state.id.us)
- Call or visit an IDWR Office

## WATER RIGHT NUMBER: 36-8000

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	RITA WERT 3115 S 1700 E WENDELL, ID 83355 (208)636-2027
Current Owner	LOREN WERT 3115 S 1700 E WENDELL, ID 83355 (208)636-2027

Priority Date: 09/11/1981

Basis: Decreed

Status: Active

Source	Tributary
--------	-----------

GROUND WATER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	401 to 1031	0.800 CFS	160.00 AF
	Total Diversion:	0.800 CFS	160.00 AF

Location of Point(s) of Diversion

GROUND WATER SW14SE14SW14 Sec 22, Twp 08S, Rgs 15E, B.M.  
GOODING County

Place of Use

## IRRIGATION

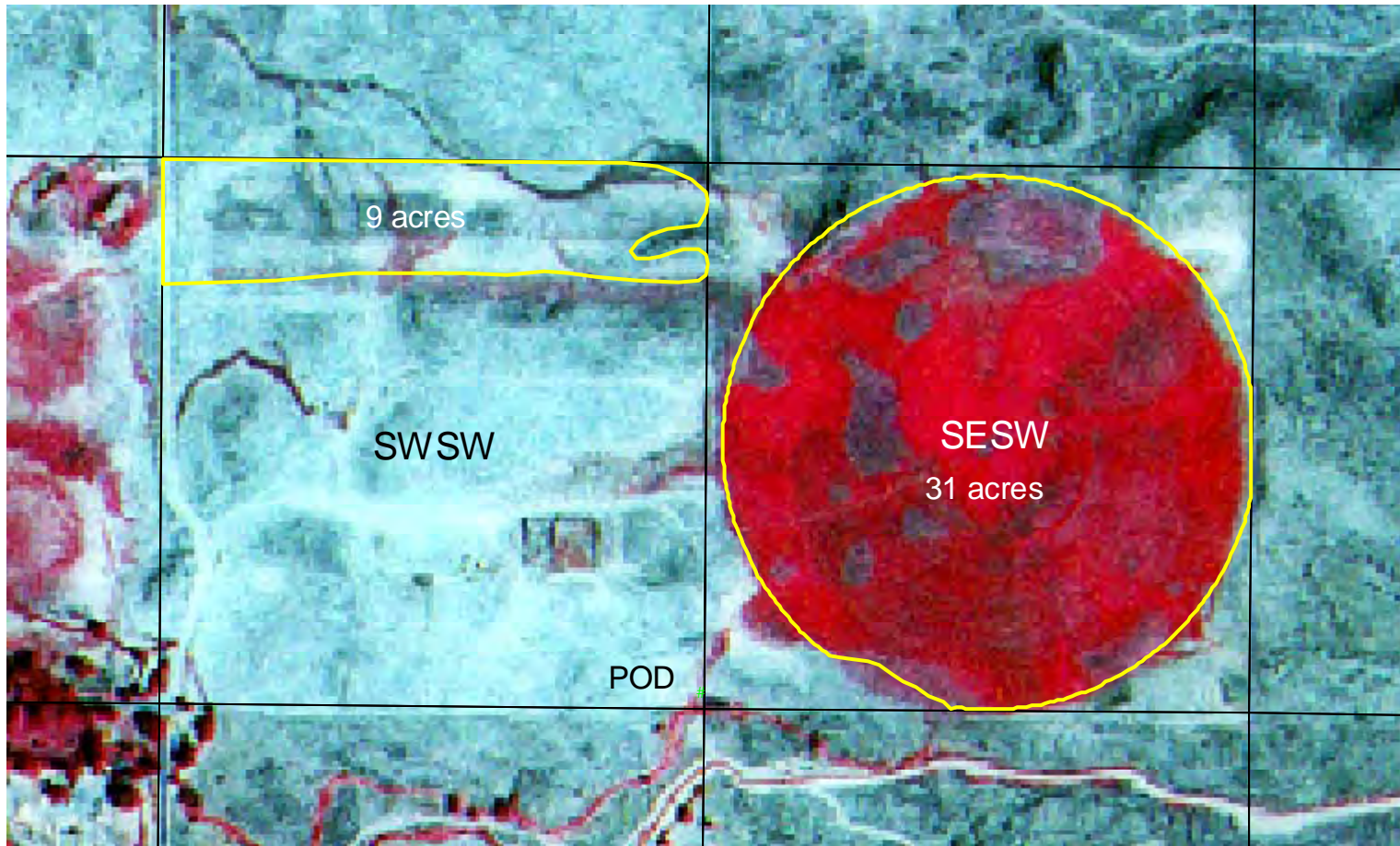
Twp	Rge	Sec	<u>NE</u>				<u>NW</u>				<u>SW</u>				<u>SE</u>				
			<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>NE</u>	<u>NW</u>	<u>SW</u>	<u>SE</u>	<u>Totals</u>
08S	15E	22											9.0	31.0					40.0

Total Acres: 40

Conditions of Approval:

1 C48 THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS NECESSARY FOR THE

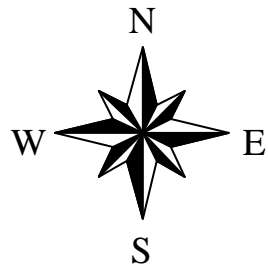
# 36-08000



500 0 500 1000 1500 Feet

## T08S R15E S22

Map prepared by: Carter Fritschle  
Date prepared: 08/13/1998  
1987-1988 NAPP photography





# IDWR Water Right and Adjudication Search

Search by: Basin

Type of Query

USAGE INSTRUCTION

☐ All SRBA & Water Rights

☐ SRBA

☐ Claims

☐ Recommendations

☐ Both

Water Rights

☐ Applications

☐ Permits

☒ Decrees, Licenses and Statutory Claims

☐ Transfers

☐ All of the above

Basin Who What When Where

Clear Search Help

Basin 36 To

Sequence 8000 To (Example: 10324)

Split Suffix (Example: A)

Note: This search tool identifies active water rights and active transfers. For listings of non-active water rights such as disallowed water rights contact IDWR.)

